IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.7550 OF 2005

Union of India & Ors.....Petitioners

Versus

G.S.Chaturvedi, DGM (S & CC)
& Others. .....Respondents

Mr. B.A.Desai, Additional Solicitor General with Mr. K.P. Pathak, Addl. Solicitor General, Mr. V.S. Masurkar, Mr. Shailendra Sharma, Mr. A.M. Sethna and Ms. S.I. Shah for the petitioners.

Mr. C.U.Singh, Senior Counsel with Mr. Sandeep V. Marne, for the Respondents.

CORAM : F.I. REBELLO &
DR. D.Y.CHANDRACHUD, JJ.
DATED : 28th October, 2005.

P.C.

. This petition is directed against the order dated 24th October, 2005 in O.A. No.546 of 2005, whereby a stay has been granted against the communication dated 18th October, 2005 of the Ministry of Communication & Information Technology till the decision of the O.A. It has also been clarified that the order covers all consequential action emanating from the order dated 18th October, 2005 and the Respondents have been directed to restore status quo ante existing on 18th October, 2005. Considering the controversy involved and the urgency the matter has been expedited and was listed for hearing on 9th November, 2005.

. This petition was filed on 27th October, 2005

and moved for hearing on 28th October, 2005, the last working day before the Diwali vacation. The learned Counsel for the parties were heard at length, considering the issues involved.

2. It is principally contended on behalf of the petitioners that the Tribunal in view of its earlier order dated 14th September, 2005 which has rejected the application for interim relief in the same O.A. ought not to have granted relief as there was no change in circumstances. It is further set out that it was not open to the Tribunal by its order dated 24th October, 2005 to direct the petitioners to restore status quo ante existing as on 18th October, 2005 as it had already come into effect. It was further submitted that the original application was not maintainable as no relief could be granted against the petitioner No.3A. At the outset it may be pointed out that in so far as this contention is concerned the Respondents had challenged the decisions of the Petitioners 1 and 2. It is the petitioner No.3A which sought to implead itself and which impleadment was allowed. It is, therefore, not possible to consider the argument as advanced on behalf of the petitioner No.3A at this stage that the original application should be dismissed on that count. If O.A.as originally constituted against the petitioner Nos. 1 and 2 suffers from want of cause of action or jurisdiction it will be open to the

Tribunal to consider the contention and decide the same or even the contention as now urged by petitioner No.3A. Surely the petitioner No.3A which sought to impleaded itself and was impleaded cannot after impleadment seek to defeat the reliefs sought for by the respondents herein on the ground that the original application against the petitioner No.3A is not maintainable atleast at the stage of interim relief before this Court.

. The respondents are all Group A Officers of the Indian Telecom Services (ITS)/Telegraph Traffic Services (ITS)/Telecom Factories Service (TFS) in MTNL/BSNL on deemed deputation. The Government of India notified what is known as Central Civil Services (Pension) Amendment Rules, 2000. These were to come into force on publication in the Official Gazette. The Central Civil Services (Pension) Rules, 1972 were amended and Rule 37A was inserted. That Rule set out that on conversion of a department of the Central Government into a public sector undertaking or an autonomous body, all Government servants of that Department shall be transferred en-mass to that public sector undertaking or autonomous body, as the case may be, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed in

the public sector undertaking or autonomous body, as the case may be, with effect from such date as may be notified by the Government. Rule 37A(4) is important. That provides that the permanent absorption of the Government servant as employees of the public sector undertaking or autonomous body shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service. Then sub-rule (5) provides that upon absorption of Government servants in the public sector undertaking or autonomous body, the posts which they were holding in the Government before such absorption shall stand abolished. Sub-Rule (6) sets out that the employees who opt to revert to Government service shall be re-deployed through the surplus cell of the Government. What emerges from this prima facie is that the permanent absorption has to be from the date of such acceptance and it is on that date that the employee should cease to be Government servant and deemed to have retired from the government service. Secondly, the posts which they are holding before abolition stands abolished and consequently as they are rendered surplus on account of abolition of post they will be redeployed by surplus cell of the Government.

. On 24th March, 2005 the Ministry of Communication, Information and Technology called for option of all those employees from the services, which are named therein in terms of Rule 2.1. The effective date of absorption, however, was to be 1st October, 2000. One of the general terms and conditions of absorption under the Rule was that any payment already made to Group "A" officers by MTNL/BSNL pending absorption and implementation of IDA pay scale (like compensatory or adhoc or advance amounts, etc) would be covered on fixation of pay in IDA scale. It would also be recovered from non-optees (i.e. officers who give option for not to be absorbed in MTNL/BSNL or do not give any option at all). Pursuant to that Various representations came to be made pursuant to which clarification was issued on May 17, 2005. There was subsequent clarification issued on May 30, 2005. One of the issues was in the matter of date of absorption. The date was maintained as 1st October, 2000. Certain other clarifications were made thereafter from time to time. The employees like the respondents herein made further representations as they were not satisfied by the clarification. The respondents filed an O.A. before the Mumbai Bench of C.A.T. in September, 2005. The interim relief sought for by the respondents was rejected by order dated 14th September, 2005.

3. In the meantime some similarly placed employees moved Guwahati High Court. The Guwahati High Court stayed the operation of letter dated 24th March, 2005 and letter dated 13th September, 2005 wherein the Government servant was called upon to give their option and the case was listed for hearing on 20th October, 2005. The Union of India being aggrieved preferred Special Leave Petition which came to be dismissed by order dated 14th October, 2005 by the Apex Court with a direction to dispose of the Writ Petition as expeditiously as possible and if possible within a period of four weeks from the date of the order. Some other employees moved the Uttaranchal High Court which granted interim relief on 29th September, 2005. The Special Leave Petition was preferred before the Apex Court against that order also came to be dismissed on 14th October, 2005 directing the High Court to dispose of the petition as expeditiously as possible and if possible within a period of four weeks from the date of the order. Similarly interim reliefs have been granted by the various Benches of the Central Administrative Tribunals at Mumbai, Hyderabad, Ernakulam, Madras, Ranchi, Bangalore, Kolkota, Jabalpur, Chandigrah, Cuttack and also at Guwahati covering about 1145 employees.

4. In the meantime on 18th October, 2005 the petitioners issued a communication. By that

communication the officers were divided into five categories. Category I was of Officers who have opted for MTNL/BSNL. Category II was officers who have opted for Government Service. Category III was officers who have approached different Courts where hearing is in progress but no stay order has been granted by the Courts. Category IV was Officers who approached the Courts and where the Courts have granted interim stay or given interim directions. Category V was Officers who did not belong to Category IV and had not given any option. These officers are deemed to have opted for Government service by virtue of para.10 of O.M. dated 24th March, 2005. The Circular further lists the list of officers falling under category IV where interim stays have been granted. The Circular further provided that all Group "A" Officers excluding those in Category I and IV thus stand reverted to Government service and should report to DOT immediately. It was further mentioned that if any officer has obtained stay order as on 18th October, 2005 he need not report to DoT. A list is attached of persons who have obtained stay which totals 1145 employees. The total strength of officers in Group "A" is 2200. This includes those Government servants who had approached the Guwahati High Court and in whose case according to the learned Additional Solicitor General the stay was operating only till 20th October, 2005. The order dated 18th October,

2005 is held not applicable to them. In other words though after 20th October, 2005, there was stay, they have been allowed to continue with BSNL/MTNL.

5. As noted earlier the original application was filed by the respondents in September, 2005. By the interim order of the Guwahati High Court the operation of the communication dated 24th March, 2005 and 30th September, 2005 were directed to remain suspended atleast till 20th October, 2005. This order was passed on 6th October, 2005. Similarly the Uttaranchal High Court on 29th September, 2005 in respect of those who had moved before it directed the petitioners herein not to take any action and directed to continue their deemed deputation.

6. The respondents herein approached C.A.T. by Miscellaneous Application against the order dated 18th October, 2005 which would be an event subsequent to their earlier Misc. Application which was rejected. The Tribunal in para.7 of its order has held that the order dated 18th October, 2005 and the subsequent action does give rise to a situation which warrants fresh look. Prima facie on 18th October, 2005 considering the order of the Guwahati High Court suspending the operation of the two orders namely orders dated 24th March, 2005 and 30th September, 2005, the order dated 18th October, 2005 could not have been issued. As pointed out earlier that order

was passed on 6th October, 2005 and the period to exercise option was even after that date. It is under these circumstances that the Court must consider whether this is a fit case where the extra ordinary jurisdiction of this Court should be invoked in respect of an interim order where hearing of the Original Application has been fixed on 9th November, 2005 by the learned Bench at Mumbai.

7. As noted earlier, if the amended Rule 37 is seen, prima facie it cannot be given retrospective effect as it speaks about the date when the absorption is to be accepted. Similarly, there are issues of deduction of moneys already paid to the respondents, who have worked with MTNL/BSNL pursuant to their deemed deputation where the working days were six days. Two High Courts had granted interim orders. S.L.Ps. filed have been dismissed with a direction to dispose of the matter expeditiously. Various Benches of C.A.T. have also granted interim relief. In these circumstances it would be appropriate that the Tribunal which is seized of the matter deliberates the issue and decides the same. We are also informed that the Principal Bench at Delhi has started hearing the matter, at the time the matter was being argued before us. A large number of employees are involved. The effect of the proceedings before the High Courts and Tribunals and the orders pased therein may give rise to various

other collateral issues. It would, therefore, be appropriate that the O.A. itself is disposed of.

8. The services of large number of employees are involved. The effect of the order dated 18th October, 2005 would be abolition of the posts and rendering the respondents surplus. They are presently working with MTNL/BSNL. Once the Apex Court refused to interfere with the order passed by the Guwahati High Court staying the orders of 24th March, 2005 and 18th September, 2005 and instead directed the Guwahati High Court to dispose of the Petition itself it was prima facie not open to the Petitioners to issue the order dated 18th October, 2005 and consequential orders. Even otherwise even if it is assumed that the order of the Guwahati High Court was for a limited period, during the period the stay was in operation, the order dated 18th October, 2005 could not have been prima facie issued. In these circumstances we think it proper that ends of justice would be met if we do not interfere with the order passed by the Tribunal, but on the contrary direct the Tribunal to dispose of the matter at any rate not later than three months from today. We direct accordingly.

9. With the above direction the petition stands disposed of. No order as to costs.

(F.I. REBELLO, J.)

(DR. D.Y. CHANDRACHUD, J.)